



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Aaron Gornstein, Undersecretary

May 15, 2014

Aldo A. Cipriano, Esq.,
Southborough Town Counsel
277 Main Street Victoria Building
Second Level Atrium Suite
Marlborough, MA 01752

**Decision on Grounds for Denial of Comprehensive Permit Application – Park Central, LLC
Southborough**

Dear Mr. Cipriano:

The Department of Housing and Community Development (DHCD) is in receipt of the Town of Southborough's April 9, 2014 letter to Park Central, LLC (Applicant), regarding its application for a Comprehensive Permit. The April 9, 2014 letter seeks to provide notice pursuant to 760 CMR 56.03(8) that the Town of Southborough Zoning Board of Appeals (Board) considers the denial of Applicant's application for a Comprehensive Permit to be consistent with local needs. Specifically, the Board claims a "safe harbor" on the grounds that it achieved certification of its Housing Production Plan (HPP).

Background

- On March 23, 2010, DHCD approved the Town's HPP.
- On February 12, 2014, Applicant filed its Comprehensive Permit application for The Residences at Park Central (Project)
- On March 17, 2014, the Town requested Certification of HPP.
- On April 2, 2014, DHCD certified that the Town was in compliance with its HPP. The certification is effective for a one year period beginning on February 13, 2014 and ending on February 12, 2015.
- On April 9, 2014, the Town provided notice pursuant to 760 CMR 56.03(8) that the Board considers the denial of the Comprehensive Permit filed by the Applicant to be consistent with local needs.
- On April 17, 2014, the Applicant (via Counsel Kevin P. O'Flaherty) provided notice pursuant to 760 CMR 56.03(8) challenging the Board's assertion that it achieved a "safe harbor."

Discussion and Findings

DHCD notes that the Applicant and Board have met the regulatory timeline(s) pursuant to 760 CMR 56.03(8) based on the information provided. DHCD finds that the certification notice of April 2, 2014 to the Town is a valid certification as defined at 760 CMR 56.03(4)(f). Based on said certification, the Board asserts it has met a “safe harbor” to deny a Comprehensive Permit. Grounds for denying a Comprehensive Permit are set forth in DHCD regulations at 760 CMR 56.03(1) (emphasis added):

- (1) A decision by a Board to deny a Comprehensive Permit, or (if the Statutory Minima defined at 760 CMR 56.03(3)(b or c) have been satisfied) grant a Comprehensive Permit with conditions, shall be upheld if one or more of the following grounds has been met *as of the date of the Project's application*:
 - (a) the municipality has achieved one or more of the Statutory Minima, in accordance with 760 CMR 56.03(3);
 - (b) the Department has certified the municipality's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4);
 - (c) the municipality has made recent progress toward the Statutory Minima, in accordance with 760 CMR 56.03(5);
 - (d) the project is a large project, as set forth in 760 CMR 56.03(6); or
 - (e) a related application has previously been received, as set forth in 760 CMR 56.03(7).

As the validity of the Board's “safe harbor” is dependent on 760 CMR 56.03(1)(b), the key issue is the timing of the Town's certification of its HPP and the date of the Applicant's Project application. The Town achieved certification on April 2, 2014, effective for a one year period beginning February 13, 2014 and ending February 12, 2015. Please note, regardless of the date of the certification notice (April 2, 2014), if DHCD determines the municipality is in compliance with its HPP, the certification period is deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question (see 56 CMR 56. 03(4)(f)).

The Applicant filed its Comprehensive Permit Application on February 12, 2014, which was prior to the Town achieving certification and the effective date of the certification. Therefore, DHCD finds that the Board has not achieved a safe harbor for purposes of denying a Comprehensive Permit Project pursuant to 760 CMR 56.03(1).

Conclusion

After careful analysis of the documentation submitted and a review of the applicable regulations and guidelines, DHCD concludes that the Board has not met the burden of proof in its assertion that a denial with conditions would be consistent with local needs on the grounds of certification, as such certification was achieved after the Applicant filed its Comprehensive Permit Application.

If either the Board or the Applicant wishes to appeal this decision pursuant to 760 CMR 56.03(8)(a), that party shall file an interlocutory appeal with the HAC on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)(11), within 20 days of its receipt of the decision, with a copy to the other party and to the Department.

The Board's hearing of the Project shall thereupon be stayed until the conclusion of the appeal, at which time the Board's hearing shall proceed in accordance with 760 CMR 56.05. Any appeal to the courts of the HAC's ruling shall not be taken until after the Board has completed its hearing and the HAC has rendered a decision on any subsequent appeal.

If you have further questions, please contact Phillip DeMartino, Technical Assistance Program Coordinator, at (617) 573-1357 or Phillip.DeMartino@state.ma.us.

Sincerely,



Leverett Wing
Associate Director
Division of Community Services

cc: Mark J. Purple, Town Administrator, Southborough
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